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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 BARBARA GRADY, individually and
15 on behalf of all others similarly
16 situated,

17 Plaintiffs,

18 vs.

19 RCM TECHNOLOGIES, INC.,

20 Defendant.
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Case No.: 5:22-cv-00842 JLS-SHK

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: February 21, 2025

Time: 10:30 a.m.

Location:

Courtroom 8A, 8th Floor
First Street U.S. Courthouse
350 West 1st Street,
Los Angeles, CA 90012

Complaint Filed: February 7, 2022

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on **February 21, 2025, at 10:30 a.m.**, or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Josephine L. Staton, Courtroom 8A, 8th Floor, United States District Court, Central District of California, First Street U.S. Courthouse, 350 West 1st Street, Los Angeles, CA 90012, Plaintiff Barbara Grady (“Plaintiff”) will hereby move this Court for an Order granting final approval of the Class Action and PAGA Settlement Agreement between Plaintiff and Defendant, which was preliminarily approved by the Court on November 13, 2024.

The Motion is made following the conference of counsel pursuant to L.R. 7-3.

This Motion is based on the accompanying Memorandum of Points and Authorities; the Declaration of Joshua G. Konecky in support of the Motion, including the Joint Stipulation of Class Action and PAGA Settlement and Release, attached as Exhibit A to the Declaration; the Declaration of Alexander Williams, Vice President of Operations at JND Legal Administration (JND), including a copy of the finalized Notice of Class Action Settlement sent by JND by mail and email to the Settlement Class Members, attached as Exhibits B and C to the Declaration; such oral argument as may be heard by the Court; and all other papers on file in this action.

Dated: December 26, 2024

Respectfully Submitted,

**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

/s/ Joshua G. Konecky

Joshua G. Konecky
Attorney for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks final approval of the proposed Class Action and PAGA Settlement Agreement that the Court preliminarily approved on November 13, 2024 (Dkt. 48). It is a non-reversionary settlement to resolve California wage and hour claims of non-exempt nurses employed by Defendant RCM to work at Covid testing and vaccination sites in California between March 1, 2020 and March 7, 2023.

Since the Court's Preliminary Approval Order, the parties have worked with the Court-appointed Settlement Administrator, JND Legal Administration (JND), to ensure implementation of the Settlement Notice process approved by the Court in its Preliminary Approval Order. On December 11, 2024, the Settlement Administrator sent the Court approved Settlement Notice by U.S. mail to the 1,097 Settlement Class Members identified in the Class Data provided by Defendant and by email to the approximately the 1,077 Settlement Class Members for whom Defendant had email addresses. It will forward any undeliverable Notices to new addresses obtained from the post office and/or skip tracing. The Settlement Administrator also activated the toll-free information line and the Settlement website on December 11, 2024.

The last day for Settlement Class Members to postmark timely objections, disputes and requests for exclusion is January 27, 2025. Plaintiff will update the Court as to any objections, disputes, and requests for exclusion received with her Reply Brief to be filed by February 14, 2025.

For the reasons previously discussed in connection with Plaintiff's Motion for Preliminary Approval and highlighted again below, the proposed Settlement meets the standards for final approval under Rule 23(e)(2) and applicable law. Additionally, as set forth below, the PAGA portion of the Settlement also should be approved because its terms are fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes. Finally, Plaintiff is filing separate motions for approval of reasonable attorneys' fees and costs pursuant to Rule 23(h) and for a service award to

1 the Class Representative. Subject to any findings the Court might make based on the
2 Class Member response to the Settlement Notice or otherwise at the Final Approval
3 Hearing, or any other developments that may occur, Plaintiff requests that the Court
4 grant final approval of the Settlement.

5 **II. BACKGROUND**

6 A description of the claims and citation to the evidence presented during the
7 case can be found in Plaintiff's Motion for Class Certification, filed June 21, 2024
8 (ECF No. 41), and Plaintiff's Motion for Preliminary Approval, filed July 26, 2024
9 (ECF No. 44).

10 In summary, Plaintiff Barbara Ann Grady worked as a temporary nurse for
11 Defendant RCM Technologies (USA), Inc. (RCM) during the Covid-19 pandemic. A
12 component of RCM's business is healthcare staffing. It has a "travel division" that
13 hires and assigns nurses to work at various healthcare clinics and facilities, including
14 in California. During 2020-2022, approximately 90% of the RCM's nurse placement
15 business in California was for Covid testing.

16 RCM had one client, the County of San Bernardino, for Covid testing at
17 approximately 25 "pop up" centers, and two other clients, Ginkgo Concentric and the
18 Los Angeles Unified School District (LAUSD), for Covid testing and/or vaccination
19 in the schools – Ginkgo had approximately 25 school sites, and LAUSD had
20 approximately 15 school sites. There was a high degree of similarity between the job
21 duties of the nurses across these placements.

22 During the Settlement Class Period (March 1, 2020 to March 7, 2023) RCM
23 placed approximately 382 individuals to work at Covid testing pop-up sites for San
24 Bernardino County, and a total of 721 individuals to perform Covid testing and/or
25 vaccinations at K-12 school sites – 612 for Ginkgo and 109 for LAUSD. During the
26 Settlement Class Period, these individuals worked approximately 26,580 shifts in the
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28

1 pop-up sites and 35,760 shifts in the K-12 schools. The Covid testing placements
2 rarely occur anymore.

3 As more fully described in the Motion for Class Certification, Plaintiff
4 maintains that RCM failed to live up to its affirmative legal duty to provide meal and
5 rest periods to its employees, and to prevent off-the-clock work, at the Covid testing
6 and vaccination sites during the pandemic. *See* ECF No. 41 at 11:4-16:21. For
7 example, Plaintiff alleges that RCM over-relied on its clients to provide the
8 opportunity for compliant meal and rest periods, and to ensure that all compensable
9 time was recorded on the timecards. *Id.* at 11:4-13:4. However, as Plaintiff further
10 maintains, RCM's clients did not have the contractual obligation, financial incentive,
11 or administrative capacity to perform this function, and RCM did not sufficiently
12 monitor the working conditions to safeguard the employees' rights. *Id.* at 4:16-5:13,
13 11:12-18.

14 In addition to deposition testimony and evidence from RCM regarding the
15 common scope of its policies, Plaintiff also cited to testimony from Class Members
16 as anecdotal evidence of the alleged impact that RCM's policies and approach had
17 on the employees working at the client sites. *Id.* at 5:14-7:2. Plaintiff maintains that
18 RCM's overreliance on the clients to safeguard the rights of its employee had a
19 particularly detrimental impact on the nurses during the Covid-19 pandemic. *Id.* at
20 1:10-12, 3:18-4:9, 5:14-7:2, 13:25-14:8.

21 Plaintiff further cited template emails RCM sent to its nurses in California
22 during the pandemic evidencing what Plaintiff describes as a policy of assuming
23 Class Members received compliant meal periods and automatically deducting time
24 for them from their hours worked. *Id.* at 7:5-13. Plaintiff maintained that this policy
25 unlawfully shifted the burden onto the nurses to prove that meal periods were not
26 compliant and that there was not a reliable method of communication with RCM for
27 them to meet this burden. *Id.* at 13:5-14:27. Plaintiff also cited testimony that RCM
28 permitted its clients to secure verbal agreements with the nurses to waive meal

1 periods (which Plaintiff alleged were unlawful). *Id.* at 7:20-8:2, 15:1-15. Finally,
2 Plaintiff cited pay records showing the lack of meal and rest period premiums as
3 evidence in support of her argument that RCM did not have a policy for paying meal
4 and rest period premiums in California until the tail end of the Settlement Class
5 Period. *Id.* at 8:3-9:11, 13:25-14:8.

6 RCM vigorously disputed Plaintiff's claims and theories of liability. For
7 example, RCM maintained that its written policies were lawful on their face, and that
8 employees were instructed about their breaks and told to record all time worked.
9 RCM further argued that inasmuch as the nurses worked at the client facilities, its
10 clients had compliant processes and it was lawful for RCM to rely on the clients to
11 supervise the employees and implement schedules to allow for meal and rest periods.
12 RCM also maintained that employees could contact RCM representatives if there
13 were problems, and that the deficiencies Plaintiff alleged did not cause violations on
14 the ground.

15 **III. PROCEDURAL HISTORY**

16 On July 22, 2021, Plaintiff submitted a notice letter to the Labor Workforce and
17 Development Agency (LWDA) specifying her claims under the Private Attorneys
18 General Act (PAGA). *See* Declaration of Joshua Konecky in Support of Motions for
19 Final Approval, Reasonable Attorneys' Fees and Costs, and Service Award
20 ("Konecky Decl.") at ¶7. On February 7, 2022, Plaintiff filed a class action and law
21 enforcement complaint in the San Bernardino County Superior Court, which RCM
22 removed on May 19, 2022. *Id.* at ¶8; ECF 1. The parties thereafter agreed to
23 mediation and the production of to facilitate mediation. *Id.* at ¶¶19-22.

24 After RMC produce written policies and aggregate data, the Parties engaged in
25 a full-day mediation before Michael J. Loeb of JAMS on December 7, 2022. *See*
26 Konecky Decl. at ¶¶11-15. This resulted in a proposed settlement for \$1,600,000.00,
27 on behalf of a settlement class consisting of approximately 1,414 individuals who
28

1 worked a combined 90,939 shifts for RCM as a traveling nurse or like hourly position
2 anywhere in California between October 8, 2017 and March 7, 2023. *See* ECF No.
3 31-2 at ¶¶6, 7, 15, 66.

4 On May 2, 2023, the Court denied preliminary approval of that settlement
5 without prejudice for several reasons, including the failure to show sufficient
6 investigation into the claims and potential value of the case. *See* ECF No. 30. On
7 September 7, 2023, the Court denied Plaintiff's renewed motion for final approval
8 based on the lack of information provided to assess commonality, typicality, and the
9 reasonableness of the settlement, among other things. *See* ECF No. 35 at 9:5-10:17,
10 12:21-13:8. On February 5, 2024, the Court denied the parties' request to conduct a
11 joint survey of class members as part of the settlement approval process and ordered
12 Plaintiff to show cause why the stay should not lift so that litigation may resume. *See*
13 ECF No. 38. Plaintiff responded that she would no longer seek approval of the
14 settlement and that litigation should resume. ECF No. 39. On February 18, 2024, the
15 Court discharged the Order to Show Cause and set a litigation schedule for the case.
16 ECF No. 40.

17 Following receipt of the Court's Order, the Parties engaged in significant
18 written discovery, depositions, and further investigation directed toward both class
19 certification issues and the merits of the claims. *See* Konecky Decl. at ¶¶20-22.
20 Defendant produced additional documents and data beyond what was earlier
21 produced. *Id.* This consisted of class member contact information and additional
22 policies and additional procedures applicable to California placements during the
23 putative class period. *Id.* Plaintiff also propounded, and Defendant answered,
24 interrogatories to show the breakdown of assignment types and work settings within
25 the originally alleged class, including related information pertaining to that
26 breakdown. *Id.* Defendant also supplemented information produced previously in
27 the case showing, by employee ID, the daily work hours recorded, the type of service
28

1 being provided, the applicable wage rates, and related information. *Id.*

2 Both parties also proceeded with depositions. Defendant took the deposition of
3 the named Plaintiff. *Id.* at ¶21. Plaintiff took the deposition of Defendant’s Director
4 of National Recruiting, and the deposition of Defendant’s 30(b)(6) designee on topics
5 including: the work assignments, settings, and job duties of the putative class
6 members; the policies, procedures, and practices pertaining to meal and rest periods;
7 the policies, procedures, and practices pertaining to wages and compensation of
8 putative class members; and the policies, procedures, and practices pertaining to
9 approval and/or payment of overtime and double time, amongst other topics. *Id.*

10 Plaintiff engaged in further informal discovery as well, interviewing putative
11 class members and obtaining signed declarations in support of her Motion for Class
12 Certification. *Id.* at ¶22.

13 On June 21, 2024 Plaintiff filed her Motion for Class Certification. *See* ECF
14 No. 41. Thereafter, the Parties met and conferred regarding the potential to re-engage
15 in settlement discussions in advance of the class certification hearing. *See* Konecky
16 Decl. at ¶24. The Parties then participated in a full-day mediation with mediator
17 Michael Loeb on July 2, 2024, following which the mediator issued a mediator’s
18 proposal for the proposed class action and PAGA settlement that is the subject of the
19 instant motion. *Id.* at ¶¶24-25. The Parties accepted the mediator’s proposal on July
20 8, 2024. *Id.* at ¶25. Among other things, the current proposed
21 Settlement has a narrower Settlement Class, covers a shorter Settlement Class Period,
22 has a different distribution formula, and has a higher per class member recovery, than
23 the earlier settlement. *Id.* at ¶26.

24 **IV. THE COURT’S ORDERS REGARDING PRELIMINARY APPROVAL**

25 On October 10, 2024, the Court issued an Order Conditionally Granting
26 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. *See* ECF
27 No. 46. Among other things, the Order “conditionally certifie[d] the Class for
28 settlement purposes only” and “appoint[ed] Barbara Grady to serve as Class

1 Representative, and Joshua Konecky to serve as Class Counsel.” ECF No. 46 at 15.
2 With respect to preliminary approval and Rule 23(e)(2)(A) in particular, the Court
3 found that Ms. Grady and Class Counsel adequately represented the Class and that
4 the Settlement Agreement was reached after they obtained an adequate information
5 base through extensive discovery focused on the relevant issues. *Id.* at 18-19. The
6 Court also found that the targeted discovery produced a more refined Settlement
7 Agreement that included a better-defined distribution formula. *Id.* at 19. With respect
8 to preliminary approval and Rule 23(e)(2)(B), the Court found that the “Settlement
9 was reached in this matter after extended, arms-length negotiations between the
10 parties” and that “[t]he parties also substantively refined the Settlement agreement in
11 response to the Court’s concerns, raised [in connection with the previous settlement
12 agreements].” *Id.* at 19.

13 In evaluating the value of the Settlement as measured against the costs, risks,
14 and delay of trial and appeal, the Court observed a significant compromise made
15 against the maximum potential trial recovery, but also recognized that this maximum
16 potential was “an unattainable best-case scenario,” in light of factors such as the more
17 realistic violation rates and the challenges in proving wilful, knowing and intentional
18 conduct causing injury for the penalty claims (which made up a significant portion of
19 the maximum potential trial recovery). *Id.* at 21-22. Ultimately, “the Court [was]
20 confident that the [\$1,026,206.75]¹ recovered for the Class represents a reasonable
21 percentage of the realistic trial recovery.” *Id.* at 22. The Court also noted that the
22 “estimated average recovery per Class Member—\$897.67 plus any allocation of the
23

24 ¹ Plaintiff’s Motion for Preliminary Approval had estimated that the net settlement
25 amount to the Class Members plus the 25% net PAGA payment to the Aggrieved
26 Employees to be \$1,026,206.75. *See* ECF No. 44 at 1:28-2:1, 22:24-27. Plaintiff
27 further estimated the net settlement payment on average to be \$897.67 per individual,
28 not including the individual PAGA payment to the Class Members who also are
PAGA Members. *Id.* at 22:28-23:1.

1 PAGA payment for PAGA Members—is also a meaningful amount.” *Id.* at 22.
2 Finally, the Court found that the Settlement eliminated significant risks of further
3 litigation, including the risk that Plaintiff would not be able to rely on facially
4 unlawful policies, that she might not be able to demonstrate a pattern and practice of
5 wage-and-hour violations, and that she might not be able to win and maintain class
6 certification through trial and a possible appeal. *Id.* at 22.

7 The Court found that the providing Settlement Class and PAGA Members with
8 their settlement awards automatically, without the need to submit claim forms, was
9 an effective method of distribution. *Id.* at 23. The Court also advised that a second
10 (or even third) round of check distributions may be necessary if the residual
11 remaining after the initial (or second) distribution is sufficient to allow for more than
12 a *de minimis* second payment after subtracting the administrative costs of the
13 additional distributions. *Id.* at 23-24.

14 In addition, the Court found that the proposed distribution formula, which
15 allocates settlement awards for Class Members in proportion to their work shifts, with
16 the longer work shifts at LAUSD and San Bernardino County being weighted 1.5
17 times more than the shorter ones at Gingko, and apportions the PAGA payments
18 proportionally based on pay periods, treats class members equitably relative to each
19 other. *Id.* at 25-26. The Court also concluded that the proposed service award of
20 \$5,000 to Ms. Grady is not inequitable. *Id.* at 26. The Court further concluded that
21 the arrangement for payment of attorneys’ fees not to exceed 25% of the Settlement
22 fund was consistent with the Ninth Circuit benchmark and did not appear to have any
23 collusive red flags, subject to further evaluation after Plaintiff brings her motion for
24 attorneys’ fees and costs pursuant to Fed. R. Civ. P. 23(h). *Id.* 24.

25 The Court then approved JND as the Settlement Administrator and approved the
26 Settlement Notice, subject to the parties including email notice and making other
27 changes to comply with Fed. R. Civ. P. 23(c)(2)(B). ECF No. 46 at 27-28, 29. The
28 parties made these changes as reflected in a supplement to the Motion filed on

1 October 15, 2024. *See* ECF No. 47.

2 The Court further ordered that the parties provide notice pursuant to the Class
3 Action Fairness Act (CAFA) to the relevant state and federal authorities at least ninety
4 (90) days before the Final Fairness Hearing. *See* ECF No. 46 at 28-29. The Court
5 also advised that at final approval, the parties “consider separately justifying the
6 PAGA portion of the Settlement, using the distinct standards for approval of PAGA
7 settlements, when moving for final approval.” *Id.* at 26.

8 In consideration of the Rule 23(e) factors, as supplemented by relevant authority
9 in the Ninth Circuit, “the Court preliminarily conclude[d] that the Settlement
10 Agreements is fair, reasonable, and adequate, and appears to be the product of serious,
11 informed, non-collusive negotiations.” *Id.* at 26. Before granting final approval, the
12 Court directed the parties to make certain amendments to the Settlement Agreement.
13 *Id.* at 26, 29. On October 15, 2024, Plaintiff filed the Supplement to Plaintiff’s
14 Motion for Preliminary Approval of Class Action and PAGA Settlement, which
15 contained the updated Settlement and amended Class Notice containing the changes
16 required for preliminary approval. *See* ECF No. 47.

17 On November 13, 2024, the Court preliminarily approved the settlement,
18 granted class certification for the Settlement Class as defined in the Settlement
19 Agreement, and approved Ms. Grady as the Class Representative and Joshua
20 Konecky as Class Counsel to act on behalf of the Settlement Class. *See* ECF No. 48
21 at 2. The Court further approved the form and content of the amended Class Notice,
22 confirmed approval of JND to serve as the Settlement Administrator, and directed the
23 Settlement Administrator and the parties to implement the Settlement in accordance
24 with the terms of the Agreement and the Court’s Orders. *Id.* at 2-4. The Court also
25 set the final approval hearing and advised as to the matters that will be considered
26 and related procedures. *Id.* at 4-6.

27 **V. ISSUANCE OF THE SETTLEMENT NOTICE AND CAFA NOTICE**

28 The Declaration submitted by the Settlement Administrator attest to the

1 Settlement Notice and CAFA Notice being issued in accordance with the terms of the
2 Court's Preliminary Approval Order. *See* Declaration of Alex Williams.

3 As a preliminary matter, the Administrator attests to providing the notices
4 required by the Class Action Fairness Act (CAFA) on October 25, 2024. *Id.* at ¶¶7-8
5 and Exhibit A.

6 Next, the Administrator confirms there were 1,097 unique Class Members in the
7 Class Data provided by Defendant and attests to sending the Notice to each of them
8 at their last known address by U.S. Mail. *Id.* at ¶¶5, 9-10 and Exhibit B. Before
9 sending the Notice, the Administrator performed NCOA address searches for each
10 Class Member with the Post Office. *Id.* at ¶10. The Administrator also will forward
11 any Notices returned as undeliverable to new addresses provided by the Post Office
12 or found through advanced searches (skip tracing). *Id.* at ¶11.

13 The Administrator also attests to sending the Notice by email to the 1,077 Class
14 Members who had email addresses in the Class Data, with a 98.8% successful
15 delivery rate. *Id.* at ¶¶11-12 and Exhibit C.

16 Further, the Administrator has established the Settlement Website and toll-free
17 information lines. *Id.* at ¶¶13-19.

18 **VI. KEY TERMS OF THE PROPOSED SETTLEMENT**

19 The key terms of the Settlement Agreement include:

- 20 • Gross Settlement Amount: The Gross Settlement Amount is \$1,658,410.
21 *See* Settlement Agreement, at ¶¶15, 53, attached as Exhibit A to Konecky
22 Decl. The Gross Settlement Amount does *not* include the employer's share
23 of payroll taxes, which Defendant will pay separately in addition to the
24 Gross Settlement Amount. *Id.* at ¶¶12, 15, 63.
- 25 • No Reversion: All settlement funds will be paid out, and none will revert
26 to Defendant. *Id.* at ¶53.
- 27 • Class Period: The Class Period is March 1, 2020 to March 7, 2023. *Id.* at
28 ¶7.
- PAGA Period: The PAGA Period is July 22, 2020 through March 7, 2023.
Id. at ¶23.

- 1 • Settlement Class: The Settlement Class comprises all those employed as
2 non-exempt, hourly paid nurses by Defendant RCM in California at any
3 time between March 1, 2020 and March 7, 2023 and assigned by RCM to
4 work at COVID-19 testing or vaccination sites for San Bernardino County
5 (including Arrowhead Regional Medical Center), or K-12 schools for
6 LAUSD or Ginkgo. *Id.* at ¶¶6.
- 7 • PAGA Members: The PAGA Members are the subset of Class Members
8 employed by RCM during the PAGA Period, July 22, 2020 to March 7,
9 2023. *Id.* at ¶20.
- 10 • Participating Class Members: The Participating Class Members are the
11 Settlement Class Members and the PAGA Members. *Id.* at ¶25
- 12 • Release by Participating Class Members: The Released Claims are limited
13 to the Participating Class Members and the claims that were pled in the
14 Complaint, based on or arising out of the factual allegations therein, during
15 the applicable Class and PAGA Periods. *Id.* at ¶¶27, 58; *see also* Notice to
16 Class, Exh. B to Konecky Decl. & Exh. 1 to Settlement Agreement at §9.
- 17 • PAGA Release: The PAGA Release is limited to the PAGA Members and
18 the claims for civil penalties under PAGA that arise out of or relate to the
19 statutes and regulations pled in the PAGA Notice and Class Action and
20 PAGA Complaint during the PAGA Period. Settlement Agreement at ¶¶24,
21 59; *see also* Notice to Class at at §9.
- 22 • Net Settlement Amount: The Net Settlement Amount is the Gross
23 Settlement Amount less the Class Counsel Award, Class Representative
24 Service Award, LWDA Payment, and Settlement Administration Costs.
25 Settlement Agreement at ¶18.
- 26 • Direct Payments to Settlement Class Members / No Claim Forms:
27 Settlement Class Members who do not opt out of the Settlement will not
28 need to submit claims to receive their pro-rata settlement payment. *Id.* at
 ¶61. Rather, Individual Settlement Awards and Individual PAGA Payments
 (i.e., settlement checks) will be automatically sent to all Class Members for
 whom a valid address can be located either through Defendant's records,
 and/or by the Settlement Administrator through the National Change of
 Address database (NCOA) and/or by skip tracing and other research. *Id.*
 at ¶¶61(a)(i)-(ii).
- Distribution Formula: The distribution formula values the shifts for
 providing Covid testing and/or vaccinations at Ginkgo K-12 sites at 1.0,
 and the shifts at LAUSD K-12 sites and San Bernardino County sites at
 1.5. *Id.* at ¶61(f). This reflects the lower hours worked at the Ginkgo K-12

1 assignments, among the other factors discussed below.

- 2 • PAGA Payment: The Parties have agreed to pay the California Labor and
3 Workforce Development Agency (“LWDA”) and the employees in
4 connection with the claims under the California Labor Code Private
5 Attorneys General Act of 2004, California Labor Code Sections 2698, *et*
6 *seq.* (“PAGA”). Settlement Agreement at ¶54. The Parties have agreed that
7 One Hundred Sixty-Five Thousand Eight Hundred and Forty-One Dollars
8 (\$165,841.00)—ten percent (10%) of the Gross Settlement Amount—will be
9 allocated to the resolution of the claims arising under PAGA. Pursuant to
10 Labor Code Section 2699(i), it would be distributed as follows: 25%, or
11 \$41,460.25, to the Settlement Class Members and 75%, or \$124,380.75, to
12 the LWDA (the “LWDA Payment”). *Id.*²
- 13 • Tax Allocation: Subject to Court approval, the Parties further agree to the
14 following as a reasonable and fair tax allocation for Individual Settlement
15 Awards: one-third (33%) as alleged unpaid wages subject to all applicable
16 tax withholdings; one-third (33%) as alleged unpaid interest; and one-third
17 (33%) as alleged unpaid penalties. *Id.* at ¶61(g)(ii). Subject to Court
18 approval, the Parties further agree that Individual PAGA Awards shall be
19 allocated as alleged unpaid civil penalties for which an IRS Form 1099
20 shall be issued. *Id.*
- 21 • Class Representative Service Award: The Settlement provides that Plaintiff
22 may seek a service payment not to exceed \$5,000.00, subject to Court
23 approval. *Id.* at ¶8. The proposed service payment is approximately 0.3
24 percent of the Gross Settlement Amount. Konecky Decl. at ¶108.
- 25 • Class Counsel Award: Class Counsel’s fees and costs are included in the
26 Gross Settlement Amount of \$1,658,410. The Settlement provides that
27 Plaintiff may make a motion to the Court for up to twenty-five percent
28 (25%) of the Gross Settlement Amount in attorneys’ fees, plus
reimbursement of actual, reasonable, costs not to exceed \$50,000.00.
Settlement Agreement at ¶4.
- Settlement Administration Costs: The costs of settlement administration
are included in the gross settlement amount of \$1,658,410. *Id.* at ¶33. JND
estimates that the administration costs will not exceed \$39,220, exclusive

² The Legislature has since amended PAGA such that 65% of the civil penalties recovered will be distributed to the LWDA and 35% to the aggrieved employees. *See* Cal. Labor Code § 2699(m). However, this new distribution formula applies to cases initiated on or after June 19, 2024. *See* 2024 Cal. Legis. Serv. Ch. 44 (A.B. 2288).

of any second and/or third distribution that may occur. *See Id.* at ¶62; Williams Decl. at ¶26

- Right to Object: Settlement Class and PAGA Members who wish to object to the Settlement have until January 27, 2025—45 days following the issuance of the Settlement Notice—to postmark their Notice of Objection to the Settlement. *Id.* at ¶¶24-25; Settlement Agreement at ¶¶19, 30. The Settlement Notice informed Class and PAGA Members of their right to object and appear at the final fairness hearing. *See* Notice to Class at §12. Class Members may sign or e-sign their objections. *Id.*
- Right to Opt Out: Settlement Class Members who wish to exclude themselves from the Settlement (opt out) have until January 27, 2025—45 days following the issuance of the Settlement Notice—to postmark their Request for Exclusion. *See* Williams Dec. at ¶¶23-24; Settlement Agreement at ¶¶29-30. The Settlement Notice informed Class Members of their right to opt out. *See* Notice to Class at §11. Class Members may sign or e-sign their Request for Exclusion. *Id.* Any Class Member who submits a completed, signed, and timely written Opt-Out shall no longer be a member of the Class, although they still will be PAGA Members and subject to the PAGA Release. Settlement Agreement at ¶29; Notice to Class at § 11; *Arias v Superior Ct. (Dairy)*, 46 Cal.4th 969 (2009).
- Right to Challenge Defendant's Records. Settlement Class and PAGA Members who dispute RCM's records with respect to their applicable shifts have until January 27, 2025—45 days following the issuance of the Settlement Notice—to postmark a "Workshift Dispute" with documentation and/or an explanation to show a contrary number of shifts. *See* Williams Dec. at ¶¶23-24; Settlement Agreement at ¶¶36, 61(f)(iv). The Settlement Notice informed Class and PAGA Members of the number of shifts and adjusted shifts applicable to them and their right and procedures for disputing this number, including the ability to submit a dispute electronically with an e-signature. *See* Notice to Class at §7. All shift disputes will be resolved and decided by the Settlement Administrator, with consultation with Defense and Class Counsel as appropriate. Settlement Agreement at ¶36.
- Additional Distributions to Class Members. Class and PAGA Members will have 180 days to cash their checks. If the amount remaining in the Settlement Fund after this check cashing period is sufficient for a second distribution of more than a de minimis payment to the Class Members who timely cashed their first check, the Administrator will make a second distribution in the same proportions as the first distribution. A third distribution will occur if a sufficient amount remains in the settlement

1 funds after the second distribution. The total remaining in the settlement
2 fund after the last distribution will be transmitted to a Court-approved cy
3 pres beneficiary. *See* Settlement Agreement at ¶61(g). As discussed below,
4 the parties propose the State Bar's Justice Gap Fund as cy pres beneficiary
5 for the Court's consideration.

6 **VII. ARGUMENT**

7 **A. The Court Should Grant Final Approval to the Class Action** 8 **Settlement**

9 1. The standards for final approval

10 As discussed by the Court in its Preliminary Approval Order, Rule 23(e)(2)
11 provides the standards for court approval of a class action settlement in federal court.
12 *See* ECF 46 at 16. The Rule provides:

13 If the proposal would bind class members, the court may approve it
14 only after a hearing and only on finding that it is fair, reasonable, and
15 adequate after considering whether:

16 (A) the class representatives and class counsel have adequately
17 represented the class;

18 (B) the proposal was negotiated at arm's length;

19 (C) the relief provided for the class is adequate, taking into account:

20 (i) the costs, risks, and delay of trial and appeal;

21 (ii) the effectiveness of any proposed method of distributing relief
22 to the class, including the method of processing class-member claims;

23 (iii) the terms of any proposed award of attorney's fees, including
24 timing of payment; and

25 (iv) any agreement required to be identified under Rule 23(e)(3);
26 and

27 (D) the proposal treats class members equitably relative to each
28 other.

Fed. R. Civ. P. 23(e)(2).

Additionally, case law from the Ninth Circuit over the past 40 years provides an
overlapping set of factors that may be used as guidance to evaluate whether a
settlement is fair, reasonable, and adequate under Rule 23(e)(2). *See* ECF 46 at 16-

1 17 (discussing Ninth Circuit factors and guidance offered from same) (citing *Officers*
2 *for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982); *Staton v.*
3 *Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003)). These factors include “[1] the
4 strength of plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of
5 further litigation; [3] the risk of maintaining class action status throughout the trial;
6 [4] the amount offered in settlement; [5] the extent of discovery completed, and the
7 stage of the proceedings; [6] the experience and views of counsel; [7] the presence
8 of a governmental participant; and [8] the reaction of the class members to the
9 proposed settlement.” ECF 46 at 16-17 (quoting *Staton*, 327 F.3d at 959).

10 The law favors the compromise and settlement of class-action suits on fair and
11 reasonable terms. *See, e.g., Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576
12 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
13 1992); *Officers for Justice*, 688 F.2d at 625. As observed by the Court, this “strong
14 judicial policy that favors settlements, particularly where complex class action
15 litigation is concerned” is balanced by the need “to protect the unnamed members of
16 the class from unjust or unfair settlement affecting their rights[.]” ECF 46 at 16
17 (quoting *Linney v Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) and
18 *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008)).

19 Final approval of a class action settlement is appropriate when “the agreement
20 is not the product of fraud or overreaching by, or collusion between, the negotiating
21 parties, and [] the settlement, taken as a whole, is fair, reasonable and adequate to all
22 concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal
23 citations omitted); *see also In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
24 946-47 (9th Cir. 2011); Fed. R. Civ. P. 23(e).

25 2. The Class representative and Class counsel have adequately
26 represented the Class

27 As the Court found at preliminary approval, Ms. Grady and Class Counsel have
28 been adequately representing the class and obtained sufficient information to make

1 an informed settlement decision. ECF No. 46 at 18-19. Indeed, Class Counsel
2 engaged in extensive and targeted discovery to gain a firm understanding of the work
3 assignments of the class members, the job duties of the class members, the policies
4 of RCM, and the competing evidence and arguments as to how RCM's policies
5 impacted the provision of meal and rest periods and timekeeping practices for the
6 nurses in the field. *See* Konecky Decl. at ¶¶20-22.

7 The discovery Counsel obtained included: (1) the production of employee
8 handbooks, written policies, timecards, and template emails concerning RCM's
9 expectations with respect to meal periods and timekeeping; (2) interrogatory
10 responses specifying the breakdown of assignment types and work settings for the
11 nurses in the class; (3) the deposition of RCM's Rule 30(b)(6) designee witness and
12 the deposition of RCM's Travel Division Manager, for further detail regarding these
13 subjects; (4) interviews with numerous class members regarding their experiences in
14 the field (some of whom submitted sworn declarations in support of the Motion for
15 Class Certification); and (5) wage and shift data that enabled Plaintiff to run damages
16 calculations for the Class. *Id.* at ¶¶20-22, 44, 50-52, 78. In addition, Ms. Grady
17 appeared for a full day of deposition to provide information about her experience
18 working as a nurse for RCM in California during the Covid-19 pandemic. *See* Grady
19 Decl. at ¶6; Konecky Decl. at ¶¶21, 106.

20 Since the Court's Preliminary Approval Order, Class Counsel has worked
21 diligently with the Settlement Administrator and cooperatively with Defense Counsel
22 to ensure implementation of the Settlement Notice. This has included reviewing and
23 providing comments to the final versions of the Class Notice and Settlement Website
24 to ensure compliance with the Settlement Agreement and Preliminary Approval
25 Order, reviewing and commenting on the CAFA Notices, and monitoring
26 implementation of the foregoing. *See* Konecky Decl. at ¶67. Class Counsel is
27 committed to continuing to monitor the Settlement and respond to inquiries from any
28 Class Members who may have questions regarding the Settlement as well as their

1 rights and options. *Id.* Class Counsel will provide the Court with additional
2 information as to the responses of the Class Members in conjunction with the Reply
3 Brief. *Id.*

4 3. The Settlement was negotiated at arms-length

5 As shown above, the parties were well-informed and well-positioned to
6 negotiate a fair, reasonable, and adequate settlement. Over the course of the case,
7 the parties and counsel engaged in two full-day mediations with Michael Loeb of
8 JAMS, an experienced class action mediator who is very knowledgeable about the
9 substantive law and procedures applicable to wage and hour cases. *See Konecky*
10 *Decl.* at ¶25. After extensive negotiation, the parties ultimately agreed to a
11 mediator’s proposal presented by Mr. Loeb at the close of the second session. *Id.* As
12 the Court observed in at preliminary approval, the negotiations also resulted in a
13 refined Settlement that addressed concerns the Court raised earlier. *See ECF No. 46*
14 *at 19.*

15 4. The relief provided to the Class is fair, reasonable, and adequate
16 taking into account the strengths, risks, potential exposure, and
17 other relevant factors.

18 “The proposed settlement is not to be judged against a hypothetical or
19 speculative measure of what might have been achieved by the negotiators.” *Officers*
20 *for Justice*, 688 F.2d at 625 (citations omitted). Indeed, “it is the very uncertainty of
21 outcome in litigation and avoidance of wasteful and expensive litigation that induce
22 consensual settlements.” *Id.* Thus, “it is well-settled law that a proposed settlement
23 may be acceptable even though it amounts to only a fraction of the potential recovery
24 that might be available to the class members at trial.” *Nat’l Rural Telecomm’s Coop*
25 *v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (citing *Linney v. Cellular Alaska*
26 *Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (additional citations omitted)). That
27 is particularly the case here where the potential recovery is premised on an
28 unattainable 100% violation rate (which does not comport with either side’s

1 investigation) and achieving large civil penalties with heightened burdens of proof
2 concerning intent. *See* ECF No. 46 at 21-22.

3 As the Court observed in its Preliminary Approval Order, the competing
4 arguments and potential burdens of proof facing Plaintiff through the various stages
5 of litigation presented various risks confronting Plaintiff with continued litigation
6 through class certification, summary judgment, trial and potential appeals. *See* ECF
7 No. 46 at 22; *see also* Konecky Decl. at ¶¶61. After considering these strengths, risks,
8 delays of further litigation, and potential exposure, the Settlement provides a strong
9 result for the Class. *See* Konecky Decl. at ¶¶50-65.

10 Class Counsel calculated Defendant's potential exposure based on specific
11 information as to the shifts worked, time recorded for the shifts, the client for the
12 shifts, and the hourly wage rate, for each Class Member, as exported by Defendant
13 from its ADP and SAP concur time and payroll systems. *See* Konecky Decl. at ¶¶44-
14 49. The exposure that Plaintiff calculated, the discounts to this exposure, and the
15 reasoning therefor, are discussed in counsel's Declaration. *Id.* at ¶¶50-65. They also
16 are analyzed in the Court's Preliminary Approval Order. *See* ECF No. 46 at 20-22.

17 After estimated attorneys' fees and costs, the proposed service award, the LWDA
18 payment, and the estimated costs of settlement administration, there will be an
19 estimated \$1,027,998.27 for distribution to the Settlement Class and PAGA Members.
20 *See* Konecky Decl. at ¶38. There are approximately 1,097 Settlement Class
21 Members. *Id.* The average net Settlement Share will be approximately \$899.31 per
22 individual, not including the Individual PAGA Payments for the Class Members who
23 also are PAGA Employees. *Id.*³

24
25 ³ The Net Settlement and average payments per Class Member and PAGA Member
26 are slightly higher now than at preliminary approval because Plaintiff is not seeking
27 the full \$50,000 previously estimated for reimbursement of litigation costs.
28 Additionally, the number of Class Members estimated at preliminary approval is the
same as the number now shown in the Class Data, while the number of shifts is very

1 Under the weighted distribution formula discussed below, the average
2 Settlement Share will be approximately \$1,245.86 per individual who worked at
3 “pop-up” sites or LAUSD K-12 sites (not including the PAGA payment); and \$615.52
4 per individual who worked at Ginkgo K-12 school sites. *Id.* at ¶40. The amount will
5 increase or decrease for each Class Member depending upon the number of shifts the
6 Class Member has worked for each assignment type during the Class Period. *See*
7 Settlement Agreement at ¶44.

8 Further, based on counsel’s investigation, the average recovery is a reasonable
9 approximation of the premium wages that might be owed for noncompliant meal and
10 rest periods if the claims were successful on the merits. The weighted average hourly
11 wage for the Settlement Class Members is approximately \$38.27. Konecky Decl. at
12 ¶49. In turn, the average recovery per shift worked is \$15.92. *Id.* at ¶38. This wage
13 recovery is within the violation rate that Plaintiff’s counsel estimated based on their
14 interviews with the Class Members. *Id.* at ¶45.

15 In the Preliminary Approval Order, the Court found that “the [\$1,026,206.75]
16 recovered for the Class represents a reasonable percentage of the realistic trial
17 recovery” and that the estimated individual recoveries are meaningful as well. *See*
18 ECF No. 46 at 22. Additionally, after this case was filed, Defendant hired a “Senior
19 HR California labor specialist” to implement California-specific policies and
20 procedures pertaining to meal and rest periods. *See id.* at ¶66. These policy changes,
21 adopted after the lawsuit, provide an additional benefit that supports final approval.

22 5. The Settlement is fair, reasonable, and adequate taking into
23 account the method of distributing relief to the Class

24 The Settlement provides a fair and equitable procedure for distributing relief to
25

26 nearly the same. the parties estimated approximately 1,097 Class Members who
27 worked approximately 61,902 Workshifts during the Class Period. *See* Settlement
28 Agreement at ¶68.

1 the Class. Class Members who do not opt out will receive their payments
2 automatically by mail without the need to file claims. *See* Agreement at ¶61.g.
3 Further the Parties have added a procedure for conducting a second (and possibly
4 third) distribution if there is sufficient residual to permit more than a de minimis
5 payment to Class Members who cashed their previous check(s). *Id.* at ¶61.g. Any
6 residual remaining after the last distribution will be transferred to a Court-approved
7 *cy pres* beneficiary. *Id.*

8 Further, the Settlement Administrator has provided the Court approved
9 Settlement Notice to the Settlement Class Members by mail and email, and will
10 perform skip tracing to resend Notices to Class Members for whom the initial Notice
11 is returned as undeliverable. *See* Administrator Decl. at ¶¶9-12. Settlement Class
12 Members will have 45-days to opt out, or to object and/or dispute the calculation of
13 their awards. *See* Settlement Agreement at ¶¶29-30, 36. Class Members will also be
14 given the opportunity to object to the Settlement and, at the Court's discretion, to
15 appear at the Final Approval/Fairness Hearing to have their objections heard by the
16 Court. *Id.* at ¶¶19, 30; *see also* Class Notice at §§12, 17.

17 6. The Settlement is fair, reasonable, and adequate taking into
18 account the proposed award of attorney's fees

19 Class Counsel is filing a separate motion for attorneys' fees and costs pursuant
20 to Fed. R. Civ. P. 23(h). Under the Amended Settlement Agreement, Plaintiff will not
21 seek attorneys' fees above the 25% benchmark in the Ninth Circuit. *See* Settlement
22 Agreement at ¶4. In addition, Plaintiff will seek reimbursement of out-of-pocket
23 costs of \$47,768.17. *See* Konecky Decl. at ¶103. To date, Plaintiff has invested more
24 than 920 hours into the case and anticipates that the maximum fee being sought will
25 result in a negative multiplier on the lodestar. *Id.* at ¶69. Plaintiff's Motion for
26 Attorneys' Fees and Costs will further discuss the reasonableness of the attorneys'
27 fees and costs being sought.

1 7. The proposed Settlement treats Class Members equitably
2 relative to each other

3 At preliminary approval, the Court concluded that the Settlement Agreement
4 proposed equitable treatment of the Class Members. *See* ECF No. 46 at 25-26.
5 Indeed, the Parties have proposed a distribution formula that reasonably reflects the
6 differential in the value of claims between those Class Members worked at the “pop
7 up” sites and LAUSD K-12 school sites, on the one hand, versus those who worked
8 at the Ginkgo K-12 school sites, on the other. Specifically, the proposed distribution
9 formula values the shifts for providing Covid testing at the “pop up” sites and LAUSD
10 K-12 sites at a rate of 1.5 to 1 to those at the Ginkgo K-12 schools. *See* SA at ¶61.f.i.
11 This reflects the likely differential in average violations incurred by Settlement Class
12 Members given the shorter shifts worked at the Ginkgo sites, as further explained in
13 Class Counsel’s Declaration. *See* Konecky Decl. at ¶43.

14 Finally, the \$5,000 service award sought on behalf of Ms. Grady does not result
15 in an inequitable distribution to the Class Representative. *See* ECF No. 46 at 26
16 (citing *Carlin v. DairyAmerica, Inc.*, 380 F.Supp.3d 998, 1024 (E.D. Cal. 2019)). The
17 reasonableness of the service award here is further discussed in Plaintiff’s separate
18 Motion for Service Award.

19 8. The proposed cy pres recipient is appropriate

20 Paragraph 61(g)(iii)(3) of the Settlement provides that any residual remaining
21 after the final distribution will be transferred to a *cy pres* recipient approved by the
22 Court and that the parties will propose an appropriate *cy pres* with the final approval
23 motion. The parties propose the State Bar’s Justice Gap Fund for the Court’s
24 consideration as the *cy pres* beneficiary. The California Legislature created the
25 Justice Gap Fund in 2006, and it is one of the significant “sources of funding for
26
27
28

1 about 100 legal aid organizations across the state providing free civil legal services.”⁴
2 The Justice Gap Fund serves the public, and workers specifically, by “protecting the
3 rights of consumers and workers to avoid fraud and exploitation.” *Id.* The Justice
4 Gap Fund is an appropriate *cy pres* beneficiary because its mission includes ensuring
5 the enforcement of the California Labor Code and ensuring workers receive all
6 wages earned pursuant to the California Labor Code. *See Bloom v. ACT*, CV18-6749
7 GW, 2024 Lexis 58314 (C.D. Cal. March 29, 2024)(Reasoning that a non-profit was
8 an appropriate *cy pres* recipient because its mission of “advancing the rights of
9 individuals” that composed the class bore “a substantial nexus to the interests of the
10 Class Members.”).

11 **B. The Court Should Approve the PAGA Portion of the Settlement**

12 PAGA settlements are subject to court review and approval. *See* Labor Code §
13 2699(s)(2). Although there is no definitive standard for approval of a PAGA
14 settlement, *see Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp.
15 3d 1074, 1075 (C.D. Cal. 2017)), a number of District Courts in the Ninth Circuit
16 have evaluated PAGA settlements by reference to whether “the settlement terms are
17 fundamentally fair, adequate, and reasonable in light of PAGA’s policies and
18 purposes.” *Jordan v. NCI Group, Inc.*, Case No. EDCV 16-1701 JVS (SPx), 2018
19 WL 1409590, *2 (C.D. Cal. Jan. 5, 2018) (citing cases). “Those purposes and
20 policies include ‘benefit[ing] the public by augmenting the state’s enforcement
21 capabilities, encouraging compliance with Labor Code provisions, and deterring
22 noncompliance.’” *Vargas v. Cent. Freight Lines, Inc.*, Case No.: 16-cv-00507-JLB,
23 2017 WL 4271893, at *3 (S.D. Cal., Sept. 25, 2017) (quoting *O’Connor v. Uber*
24 *Techs., Inc.*, 201 F. Supp. 3d 1110, 1132-33 (N.D. Cal. 2016)).

25 While a PAGA representative action is distinct from a Rule 23 class action,
26

27 ⁴ The State Bar of California, The Justice Gap Fund, [https://www.calbar.ca.gov/Access-to-](https://www.calbar.ca.gov/Access-to-Justice/Grants/Justice-Gap-Fund)
28 Justice/Grants/Justice-Gap-Fund (last visited December 26, 2024).

1 *Flores*, 253 F. Supp. 3d at 1076, the reasons discussed above as to why the Settlement
2 is fair, reasonable, and adequate under Rule 23 also show that the PAGA claims were
3 negotiated at arms-length and with a sufficient information base, and that Counsel’s
4 exposure and risk analyses were reasonable.

5 It also bears noting that Counsel conducted a specific exposure and risk analysis
6 for the PAGA claims. *See* Konecky Decl. at ¶¶48-49. This analysis considered,
7 among other things, arguments concerning the “stacking” of penalties that may be
8 argued by Defendant, arguments concerning whether to apply the \$100 or \$200 civil
9 penalty, and whether the Court might exercise its discretion to reduce penalties based
10 on a determination that “to do otherwise would result in an award that is unjust,
11 arbitrary and oppressive, or confiscatory” under Labor Code § 2699(e)(2). *See*
12 Konecky Decl. at ¶63.

13 The parties’ agreement to allocate ten percent of the Gross Settlement Amount
14 to PAGA is also reasonable. Indeed, courts have approved amounts for PAGA
15 penalties within the range of zero to two percent of a settlement amount. *See Hopson*
16 *v. Hanesbrands Inc.*, No. CV–08–0844 EDL, 2009 WL 928133, at *1, *9 (N.D. Cal.,
17 Apr. 3, 2009) (approving a PAGA payment of \$1,500 from \$408,420 Maximum
18 Settlement Amount—0.37%); *Jack v. Hartford Fire Ins. Co.*, No. 3:09–cv–1683–
19 MMA(JMA), 2011 WL 4899942, at *1, *6 (S.D. Cal., Oct. 13, 2011) (approving a
20 PAGA payment of \$3,000 from \$1,200,000 settlement fund—0.25%); *Reed v.*
21 *Thousand Oaks Toyota*, 56-2012-00419282-CU-OE-VTA, 2013 WL 8118716 (Cal.
22 Super. Ct. Apr. 8, 2013) (1.3%); *Bolton v. U.S. Nursing Corp.*, No. C 12–4466 LB,
23 2013 WL 5700403, *2 (N.D. Cal. Oct. 18, 2013) (approving \$15,000 PAGA
24 allocation from total settlement of \$1,700,000—0.88%); *McKenzie v. Fed. Express*
25 *Corp.*, CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23,
26 2012) (“This allocation represents one percent of the \$8.25 million maximum
27 settlement amount, and Plaintiff correctly notes that this is within the zero to two
28 percent range for PAGA claims approved by courts.”) (collecting cases).

1 The Settlement is also divided in accordance with the statute's distribution
2 formula that is applicable to the PAGA claims in this case, which were initiated by
3 Plaintiff's initial notice letter to the LWDA on July 22, 2021. Under the version of
4 the PAGA that applies to PAGA claims initiated before June 19, 2024, 75% of the
5 civil penalties recovered are paid to the LWDA and the remaining 25% are paid to
6 the aggrieved employees. *See* Labor Code § 2699(i), Stats.2016, c. 31 (S.B.836), §
7 189, eff. June 27, 2016.⁵ The parties' compliance with applicable law as to the
8 distribution of PAGA civil penalties is another factor in favor of granting approval of
9 the PAGA Settlement. *Flores*, 253 F.Supp.3d at 1077; *Echavez v. Abercrombie &*
10 *Fitch Co., Inc.*, Case No. CV 11–09754–GAF, 2017 WL 3669607, at *4 (C.D. Cal.,
11 March 23, 2017).

12 Finally, on July 26, 2024, the same day Plaintiff filed her Motion for
13 Preliminary Approval in this Court, Plaintiff also provided notice of the Settlement
14 to the Labor Workforce Development Agency, pursuant to California Labor Code §
15 2699(s)(2). *See* Konecky Decl. at ¶29, and Exh. Z. To date, the LWDA has not
16 submitted a comment or objection to the Settlement. *Id.* This also weighs in favor
17 of approval. *See Jordan*, 2018 WL 1409590, at *3; *Echavez v. Abercrombie & Fitch*
18 *Co., Inc.*, Case No. CV 11–09754–GAF, 2017 WL 3669607, at *3 (C.D. Cal., March
19 23, 2017)(“[T]he Court finds persuasive that LWDA was invited to file a response to
20 the proposed settlement agreement in this case and elected not to file any objections
21 or opposition thereto. The Court infers LWDA's non-response is tantamount to its
22 consent to the proposed settlement terms, namely the proposed PAGA penalty

23
24
25 ⁵ After the parties reached the Settlement, the Legislature amended the statute such
26 that 65% of the civil penalties recovered will be distributed to the LWDA and 35%
27 to the aggrieved employees. Cal. Labor Code § 2699(m). However, this new
28 distribution formula applies to cases filed on or after June 19, 2024. *See* 2024 Cal.
Legis. Serv. Ch. 44 (A.B. 2288).

amount.”).⁶

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the accompanying Proposed Order granting Plaintiff’s Motion for Final approval of Class Action and PAGA Settlement.

IX. REQUEST TO BE EXUSED FROM L.R. 11-6.1

This brief contains 8,805 words, which exceeds the brief length limit of L.R. 11-6.1. Plaintiff respectfully requests that the Court make an exception to the length limitation here to allow for the showing at issue and because the Motion is unopposed by Defendant, thereby likely reducing the number of briefs in total.

Dated: December 26, 2024

/s/ Joshua G. Konecky

Joshua G. Konecky

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

Attorneys for Plaintiff

⁶ The Aggrieved Employees also received Notice of the Settlement and will have an opportunity to object. SA at ¶19; Notice of Settlement at §12. Under applicable law, however, Class Members will not have an opportunity to object to the PAGA Release or opt out of the PAGA portion of the settlement, as this technically belongs to the State of California, which also is receiving notice of the Settlement. *Uribe v. Crown Building Maintenance Co.*, 70 Cal.App.5th 986, 1001 (2021) (citations omitted).

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2024, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Joshua G. Konecky
Joshua G. Konecky